

CUMBERLAND FINANCEBatch # 241

JUN 29 2010

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 Attorney for Plaintiff Charnette Holmes

CHARNETTE HOLMES,

Plaintiff,

vs,

BRIAN CUSHNER,
CITY OF MILLVILLE and
JOHN DOE(S),

Defendant.

: SUPERIOR COURT OF NEW JERSEY

: CUMBERLAND COUNTY

: LAW DIVISION

: Docket No.: L 662-10

: COMPLAINT

605 CIVIL RIGHTS

CIVIL ACTION

SUPERIOR COURT OF N.J.
CUMBERLAND COUNTY
LAW DIVISION

JUN 29 2010

REC'D & FILED
CIVIL CASE
MANAGEMENT OFFICE

SEP 20 2010

Plaintiff, Charnette Holmes, residing at 1002 Buck Street, Millville, New Jersey, by way
 of Complaint against Defendants Brian Cushner, City of Millville and John Doe(s), says:

I. IDENTIFICATION OF PARTIES

1. Plaintiff Charnette Holmes (hereinafter "Holmes") resides at 1002 Buck Street, Millville, New Jersey, Cumberland County, New Jersey.
2. Holmes, at all times pertinent hereto, was a citizen of the United States and a resident of the State of New Jersey.
3. At all times relevant herein Defendant City of Millville (hereinafter "Millville") was and is a municipal corporation within the State of New Jersey and at all times relevant herein employed Defendants Brian Cushner and those defendants identified hereinbelow and collectively referred to as John Doe(s).
4. Brian Cushner (hereinafter "Cushner") was, at all times pertinent hereto, a duly appointed

Superior Court of New Jersey
Cumberland

JUN 29 2010

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and employed policeman and officer of the City of Millville, acting under color of law.

5. Upon information and belief, there exist additional employees of the City of Millville Police Department, other law enforcement entities and/or persons and/or others whose true names are unknown to Holmes, who participated, assisted, acquiesced in, failed to report and/or covered up and were responsible and liable for the illegal and unconstitutional seizure, arrest, charging and detention of Holmes, as described in this complaint, which proximately caused the injuries and damages suffered by Holmes. Said unnamed and unknown individuals acted under color of law and are referred to as John Doe(s) I.

6. Upon information and belief, there exist additional employees of the City of Millville Police Department, other law enforcement entities and/or persons and/or others whose true names are unknown to Holmes, who are responsible and liable as officer(s) in charge of and/or supervisors of Cushner and John Doe(s) I with respect to the illegal and unconstitutional seizure, arrest, charging and detention of Holmes, as described in this complaint, which proximately caused the injuries and damages suffered by Holmes. Said unnamed and unknown individuals acted under color of law and are referred to as John Doe(s) II.

7. Upon information and belief, there exist additional employees of the City of Millville Police Department, other law enforcement entities and/or persons and/or others whose true names are unknown to Holmes, who are responsible and liable as supervisors for tolerating past or ongoing illegal and unconstitutional seizures, arrests, chargings and detentions, including the events complained of herein, which proximately caused the injuries and damages suffered by Holmes. Said unnamed and unknown individuals acted under color of law and are referred to as John Doe(s) III.

8. Upon information and belief, there exist additional employees of the City of Millville

Police Department, other law enforcement entities and/or persons and/or others whose true names are unknown to Holmes, who are policymakers responsible and liable for the illegal and unconstitutional policies and/or customs of the City of Millville, including but not limited to unconstitutional seizures, arrests, charging and detentions, as described in this complaint, which proximately caused the injuries and damages suffered by Holmes. Said unnamed and unknown individuals acted under color of law and are referred to as John Doe(s) IV and include but are not limited to persons employed at the rank of lieutenant, captain or Chief of Police, at all relevant times.

9. John Doe(s) I, John Doe(s) II, John Doe(s) III and John Doe(s) IV are elsewhere described in this complaint as John Doe(s).

II. FACTUAL ALLEGATIONS

10. On July 3, 2008 during the early evening hours Holmes was home at her residence, 1002 Buck Street, Millville, New Jersey.

11. Holmes was upstairs in her home having her hair braided when she heard outside loud yelling and cursing.

12. Holmes went outside where she saw and heard an argument between Destine Colvin (hereinafter "Colvin"), her niece and Latoya Hadden (hereinafter "Hadden").

13. Holmes made her best efforts to have the argument terminated, including getting Colvin to go inside the residence and Hadden to leave the premises.

14. A Millville Police car arrived.

15. Two Millville police officers walked by Holmes as Hadden drove off with other people in her car.

16. Holmes approached Cushner and said in substance, "excuse me," identifying herself as

the homeowner.

17. Cushner ignored Holmes and Holmes approached him a second time and touched his arm.

18. Cushner said to Holmes in substance "don't f - - -ing touch me, don't touch a police officer."

19. Holmes said in substance to Cushner that she was trying to tell him that he was letting the person who had come to her house and created the incident to get away.

20. Cushner stated to Holmes that she was under arrest and Holmes in substance asked why.

21. Cushner gave no explanation, but repeated to Holmes that she was under arrest and to put her hands behind her back.

22. Holmes complied and put her hands behind her back, but apparently not to Cushner's satisfaction.

23. Holmes told Cushner that her hands were behind her back, but Cushner grabbed Holmes's arm and pulled one arm closer to her back.

24. While both arms were behind her back, Cushner maced Holmes.

25. Holmes was sprayed at close range in her eyes, nose and throat.

26. As Holmes was reacting defensively to the mace, Cushner slammed her to the ground with great force.

27. Holmes was placed in a police car with the windows up, which made it difficult for her to breathe.

28. At the police station, Cushner and John Doe(s) made derogatory statement to Holmes, including the statement "you people are gonna learn."

29. Holmes was transported to the Cumberland County Jail, which initially refused to admit

her until she was first taken to the hospital.

30. Holmes was not released from the Jail until the following day.

31. Holmes received medical treatment after she was released from the Jail for injuries, which included injuries to her ear and eye.

III. CAUSE OF ACTION

FIRST COUNT

32. Holmes realleges and reaffirms the allegations in the preceding paragraphs and make same a part hereof by reference.

33. This cause of action is brought pursuant to 42 U.S.C. §1983 and in accordance with the Fourth and Fourteenth Amendments to the Constitution of the United States of America.

34. Cushner and John Doe(s) I and II illegally and unconstitutionally seized, arrested, charged and detained Holmes without probable cause and with the intent and purpose to cover up their own illegal and unconstitutional actions against Holmes.

35. Cushner and John Doe(s) I and II did not act in an objectively reasonable manner in arresting Holmes, as complained of herein.

36. Cushner and John Doe(s) I and II could not reasonably have believed that Holmes had committed any criminal offenses.

37. Cushner and John Doe(s) I and II exercised excessive force in illegally and unconstitutionally seizing, arresting, charging and detaining Holmes.

38. The City of Millville and its policymakers, John Doe(s) III and IV had a policy or custom of failing to adequately train its officers and employees with respect to the prevention of unconstitutional and unreasonable seizures, arrests, chargings and detentions and were deliberately

indifferent to the deficiency in training in the above regard and to the rights of persons with whom the police came in contact, which deficiency in training proximately caused the injuries and damages complained of herein by Holmes.

39. The City of Millville and its policymakers, John Doe(s) III and IV, had a policy and/or custom that tolerated use of unconstitutional and unreasonable seizures, arrests, chargings and detentions, which proximately caused the constitutional injuries complained of herein by Holmes.

40. The City of Millville and John Doe(s) II, III and IV negligently supervised Cushner and John Doe(s) I who were involved in the unconstitutional seizure, arrest, charging and detention of Holmes.

41. The City of Millville and John Doe(s) II, III and IV knew and/or were aware of and/or should have known of the alternatives for preventing the constitutional violations complained of herein and/or acquiesced in a policy or custom of inaction or toleration in the above regard.

42. Cushner and John Doe(s) I, II, III and IV directly and proximately caused Holmes to be subjected to an unreasonable seizure, arrest, charging and detention, thereby violating Holmes's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

43. Cushner and John Doe(s) I, II, III and IV jointly, severally and in the alternative, deprived Holmes of federal and constitutional rights, as set forth herein, and deprived Holmes of said rights acting under color of state law, in violation of 42 U.S.C. §1983.

44. As a proximate cause of the actions and omissions of Defendants, Holmes suffered great and substantial emotional upset, physical and mental pain, suffering, grief and anguish, as well as other damages and injuries set forth in this Complaint.

WHEREFORE, Plaintiff Charnette Holmes respectfully prays judgment against Defendants

City of Millville, Brian Cushner and John Doe(s) I, John Doe(s) III and John Doe(s) IV, individually, jointly, severally, for such sums as would reasonably and properly compensate Plaintiff Charnette Holmes in accordance with the law, together with punitive damages to the extent applicable and allowed, prejudgment interest, costs of suit and reasonable attorneys fees pursuant to 42 U.S.C. §1988.

JURY DEMAND

DEMAND IS HEREBY MADE FOR A TRIAL BY JURY ON ALL ISSUES.

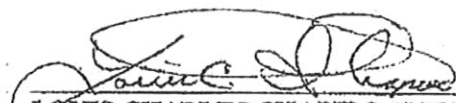
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Louis Charles Shapiro, Esquire is hereby designated as trial counsel in the above captioned litigation on behalf of the Plaintiff Charnette Holmes.

NOTICE PURSUANT TO RULES 1:5-1(a) and 4:17-(c)

TAKE NOTICE that the undersigned attorney, counsel for Plaintiff Charnette Holmes does hereby demand pursuant to Rules 1:5-1(a) and 4:17-4(c) that each party herein serving pleadings and interrogatories and receiving answers thereto serve copies of all such pleadings and interrogatories upon the undersigned attorney and TAKE NOTICE that this is a continuing demand.

LOUIS CHARLES SHAPIRO, P.A.
Attorney for Plaintiff Charnette Holmes


LOUIS CHARLES SHAPIRO, ESQUIRE

DATED: June 29, 2010

CERTIFICATION

I, Louis Charles Shapiro, Esquire of full age, do hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey, and I am responsible for the preparation and trial of the within matter.

2. This matter is not related to any other matters, nor has any action been brought in any court, relative to the within complaint.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


LOUIS CHARLES SHAPIRO, ESQUIRE

DATED: June 29, 2010